

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0658
CORPORATE INCOME TAX
FOR TAX PERIODS: 1993-October 1, 1995

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Issue

1. Gross Income Tax: Gross Receipts

Authority: IC 6-2.1-2-2, IC 6-2.1-1-2(a)(10),

The taxpayer protests the disallowance of the deduction for receipts from a certain account.

2. Tax Administration: Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the negligence penalty.

Statement of Facts

The taxpayer, a corporation with its commercial domicile in another state, is a food and beverage company. After an audit, the Indiana Department of Revenue (department) assessed the taxpayer additional gross income tax, interest and penalty. The taxpayer protested the assessment and a hearing was held. More facts will be provided as necessary.

1. Gross Income Tax: Gross Receipts

Pursuant to IC 6-2.1-2-2, Indiana imposes a gross income tax on the gross receipts of derived from business activities in Indiana. Gross income is defined at IC 6-2.1-1-2(a)(10) as "all the gross receipts a taxpayer receives. . . from any other source not specifically described in this subsection." The taxpayer deducted the monies in the "Amount Due From Account" from its gross receipts to report for the gross income tax. The department disallowed this deduction in the audit.

The taxpayer protested the department's disallowance of its deduction of "Amount Due From Account" from the taxpayer's gross receipts. The taxpayer alleged that the "Amount Due From Account" is entitled to deduction because it represents cost reimbursement due from a customer based upon the difference between the taxpayer's actual profit for the period and the agreed upon profit outlined in the contract with the customer. Such a difference may arise, for example, if the customer requests that products sold at the customer's location be sold at a specific price to employees. To the extent this price results in a profit below the agreed upon profit specified in the contract, the customer must reimburse the taxpayer. The taxpayer considered this a cost reimbursement or fee for services entitled to be deducted from the gross income subject to gross income tax.

The law lists the allowable deductions from gross receipts for purposes of the gross income tax at IC 6-2.1-1-2. The taxpayer's fact situation is not one of the allowable deductions.

The monies coming to the taxpayer from the "Amount Due From Account" are additional receipts from the taxpayer's business activities in Indiana. The cost reimbursement provisions merely guarantee that the taxpayer will receive income to equal a certain profit margin. It makes no difference whether the monies are paid by the customer directly to the taxpayer or by the employer who subsidizes the customer's purchases. The end result is the taxpayer receives income not qualifying for any of the deductions allowed by the statute. These receipts are, therefore, subject to the gross income tax.

Finding

The taxpayer's protest is denied.

Discussion

2. Tax Administration: Negligence Penalty

Discussion

The taxpayer also protested the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer is a major corporation with an extensive tax and accounting department. Even so, it failed to report the clearly taxable income from the sales of tangible personal property. The taxpayer's failure to report this income was a failure "to use such reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer." This breach of its duty constitutes negligence.

Finding

The taxpayer's protest is denied.

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